

Application No. 10/750,418
Amendment dated January 12, 2006
Reply to Office Action of November 3, 2005

Remarks/Arguments

Applicant thanks the Examiner for the Office Action of November 3, 2005 and telephone interview of January 10, 2006. This Amendment is fully responsive thereto. Applicant also thanks the Examiner for the indication of allowable subject matter for claim 13. Applicant has amended claims 1, 3, 7, 9, 11-13, 15, 17, and 20. Applicant has also cancelled claims 2, 10, 16, and 19.

Justification for Entry of the After-Final Amendment

Applicant believes that the After-Final Amendment should be entered because it places the application in condition for allowance. However, if the Examiner does not consider it so, Applicants respectfully request entry of the Amendment because:

- A) it does not raise new issues that would require further consideration or search;
- B) it does not raise the issue of new matter;
- C) it places the application in better condition for appeal by materially simplifying or narrowing the issues on appeal; and
- D) it does not present additional claims.

The Amendment satisfies condition (A) since the claim limitation introduced into the independent claims has already been searched and considered by the Examiner during examination and during the telephone interview. Also, additional claim amendments are minor changes to the claims to remove any issues under 35 USC 112, second paragraph. It satisfies condition (B) since no new matter was introduced by importing the limitation of some dependent claims into the independent claims and other claim amendments are minor changes to the claims to remove any issues under 35 USC 112, second paragraph. It satisfies condition (C) because it removes two out of three alternative sets of claims: a cabinet/method containing a dessicator or a cabinet/method containing a

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dessicator and a nitrogen generator. It satisfies condition (D) because no new claims are introduced.

NOVELTY

In the Office Action, the Examiner rejected claims 1, 9, 11-12, 14-15, and 18-20 under 35 USC 102(b) as anticipated by U.S. Patent 6,221,163 (Roberson). Applicant respectfully traverses the rejection because Roberson fails to disclose, teach, or suggest all of the claim limitations, as amended. At the Examiner's suggestion, Applicant has narrowed the claims to require a nitrogen generator. Applicant respectfully requests withdrawal of the rejection because the Examiner has already indicated that Roberson does not teach generating nitrogen.

NON-OBVIOUSNESS

The Examiner also rejected claims 2, 6-8, and 10 under 35 USC 103(a) as obvious over Roberson in view of U.S. Patent 6,615,908 (Bosher) and claims 3-5 and 16-17 over Roberson in view of Bosher and U.S. Patent 5,439,507 (Barbe). Applicant respectfully traverses the rejection for the reasons discussed in the August 17, 2005 Request for Reconsideration and also for any one or more of the below reasons.

Lack of Motivation

Applicant respectfully asserts that there would be no motivation for one of ordinary skill in the art to combine the teachings of Roberson and Bosher in the manner suggested by the Examiner.

Roberson discloses molecular contamination control of a standard mechanical interface box (SMIF) by purging. Roberson fails to disclose a nitrogen generator as acknowledge by the Examiner.

Bosher separately discloses temperature, humidity, and gas composition control of the environment surrounding contained produce. Applicant notes that

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the atmosphere composition control portion of Boshier is not linked to the humidity or temperature control portions of Boshier. Rather, humidity and temperature control is achieved by Boshier in a number of ways, including heat exchange. Applicant also points out that the humidity and temperature control disclosures of Boshier fail to disclose the use of a nitrogen generator.

To the extent that Boshier addresses generation of nitrogen, it discloses control of the composition of a gas environment for longer storage or transport of produce, and in particular, produce which is more susceptible to high rates of senescence (column 12, lines 11-19). Boshier explicitly states, however, that control of the composition is not necessary. As an example, Boshier discloses that controlling the gas environment composition for carrots, and particularly, brief storage or transport of produce, is not necessary (column 12, lines 12-14). Boshier discloses that the gas environment composition may be controlled for longer storage or transport of produce, especially for produce which is susceptible to high rates of senescence (column 12, lines 16-19) (the term, "senescence" with regard to produce, means degradation of the living organism leading toward death thereof). Thus, control of the atmosphere composition is linked to either senescence of produce or longer storage or transport of produce.

With respect to the idea of controlling the gas composition of Roberson, Applicant asserts that one of ordinary skill in the art of surface mount devices (SMD's) would not be at all concerned with the degradation and death of produce and therefore would not look to Boshier as relevant or be motivated by Boshier to substitute a nitrogen generator as suggested by the Examiner for the non-generator source of nitrogen in Roberson.

Even if one of ordinary skill in the art would look to Boshier to control the atmosphere composition in Roberson (which Applicant strenuously argues such a one would not), the Examiner still has not shown any motivation to select an application using nitrogen over other alternative methods of controlling the gas atmosphere. The use of a nitrogen generator is but one type of five alternative

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ways taught by Boshier for controlling the atmosphere composition: 1) the use of a nitrogen generator; 2) chemicals (column 12, line 37); 3) plastics (column 12, line 37); 4) other types of fibers (column 12, line 37); and 5) active films (column 12, line 54).

Moreover, Roberson already discloses the use of nitrogen, the source of which is not a nitrogen generator (as acknowledged by the Examiner), such as house nitrogen in Figure 11. Furthermore, the Examiner has not shown that a nitrogen generator would provide any advantage over the Roberson nitrogen supply.

In summary, the above obviousness combination is legally insufficient because such a combination of teachings (choosing to control the gas environment composition of Roberson plus selecting a nitrogen generator amongst five alternative methods plus choosing a nitrogen generator over the nitrogen source of nitrogen of Roberson) must always be associated with a motivation. Otherwise, combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability, which is the essence of hindsight. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999).

Non-Analogous Fields of Art

It is well established that a reference does not qualify as prior art in an obviousness rejection unless it is either in the field of applicant's endeavor or is reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992).

Applicant respectfully asserts that Boshier is not in the same field of endeavor as that of the invention. Boshier is directed to transporting fresh produce. It is also directed to maintaining a minimum humidity in the atmosphere surrounding the fresh produce.

In contrast, the claimed invention is directed to dry storage of SMDs.


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Applicant also asserts that Boshier was not reasonably pertinent to the particular problem with which the inventor was concerned. The inventor was concerned with avoiding moisture-induced failures of surface mount devices at reduced costs in comparison to relatively expensive installations using a centralized nitrogen or dry air system. Applicant fails to see any disclosure in Boshier indicating that it was reasonably pertinent to the particular problem with which the inventor was concerned.

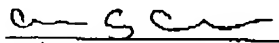
Accordingly, it is believed that, upon entry of the amendment, the present application will be in condition for allowance. Early notice to this effect is earnestly solicited.

Should the examiner believe an additional telephone call would expedite the prosecution of the application for allowance, pre-appeal brief, or appeal purposes, she is invited to call the undersigned attorney at the number listed below. It is not believed that any fee is due at this time. If that belief is incorrect, please debit deposit account number 01-1375. Also, the Commissioner is authorized to credit any overpayment to deposit account number 01-1375.

Respectfully submitted,


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<p>CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8(a)</p> <p>I hereby certify that this correspondence is being transmitted via facsimile to telephone number 571-273-8300 on this 12th day of January, 2006.</p> <p> Christopher J. Cronin</p>
